

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-215502

DATE: September 30, 1985

MATTER OF: Algie Horton, Jr. - Temporary Duty Travel -
Non-commercial Quarters

DIGEST:

1. An employee who was transferred from Chicago to Springfield, Illinois, thereafter performed temporary duty travel on an "as required" basis throughout Illinois, including Chicago, where his family continued to reside. His subsistence expenses while staying with his family in Chicago were administratively disallowed since he stayed at his family's residence. Since Springfield was the employee's permanent duty station, the fact that he stayed with his family while on temporary duty does not bar reimbursement of his travel expenses.
2. An employee performed temporary duty travel to a high rate geographical area (HRGA) and stayed with his family while there. He was authorized reimbursement on an actual expense basis, but claims reimbursement of one-half of the actual expense rate, as authorized by agency regulations. Paragraph 1-8.1b of the Federal Travel Regulations (FTR) grants an agency head discretionary authority to authorize special per diem in lieu of actual expenses in HRGA's under certain circumstances. Where the agency has established a special per diem rate for non-commercial quarters in HRGA's, that special rate satisfies the requirements of the FTR. The determination to apply that rate need not be made on a case-by-case basis. Jack O. Padrick, B-189317, November 23, 1977, and similar cases will no longer be followed to the extent that they require a separate determination to apply a preestablished fixed rate for each individual case.

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This decision is in response to a request from the Regional Administrator, Region 5, Federal Highway Administration, Department of Transportation, Homewood, Illinois. It concerns the entitlement of an employee to be paid a special per diem rate while performing temporary duty in a designated high rate geographical area (HRGA) during March-April 1984. For the reasons set forth below, we conclude that he is entitled to be paid at the special per diem rate.

BACKGROUND

The claimant, Mr. Algie Horton, Jr., is a Safety Investigator with the Federal Highway Administration. His permanent duty station at the time his claim arose was the Federal Highway Administration's Region 5 Headquarters, Springfield, Illinois. By blanket travel authorization, dated April 2, 1984, Mr. Horton and about 20 others were authorized to perform travel on an "as required" basis from that headquarters to various locations in the State of Illinois and return, during the period April 1, 1984, to June 30, 1984. This travel authorization specified various per diem and HRGA rates, but it did not specifically incorporate the terms of Department of Transportation Notice N 1500.46, March 21, 1984, which is discussed below.

One of the points to which Mr. Horton traveled was Chicago, a designated HRGA. In his initial travel voucher, Mr. Horton asserted that he made three separate trips from Springfield to Chicago, and return. He claimed entitlement to a flat rate per diem of \$37.50, which was 1/2 of the \$75 per day maximum daily actual subsistence rate authorized for the Chicago area. He noted on that travel voucher that he did not incur any lodging cost because he stayed with his family in Chicago. His claim was administratively disallowed. The reason given was that since Mr. Horton had a residence in Chicago, no temporary duty living expenses were payable unless he could show that he incurred expenses in excess of comparable expenses he would otherwise have incurred at his duty station in Springfield.

On reclaim, Mr. Horton contends that the basis for the administrative disallowance of his claim implies that the Chicago residence was his official residence.

He asserts that such was not the case. He states that, prior to April 1983, his official permanent duty station was the Region 5 office in Homewood, Illinois (a suburb of Chicago), and that he commuted to that duty station from his Chicago residence. In April 1983, about 1 year before his travel expense claim arose, he was transferred to the agency's Illinois Division Office in Springfield, Illinois. Incident to that transfer, he moved to an apartment in Springfield and maintained it thereafter as the residence from which he commuted to his permanent duty station. Mr. Horton adds that neither his wife nor his children accompanied him to Springfield. They remained in the Chicago residence for family reasons.

Subsequent to our receipt of this claim from the agency, Mr. Horton informally requested that we consider the possible applicability of decision Durel R. Patterson, B-211818, February 14, 1984, to his situation.

DECISION

The provisions of law governing the entitlement of Federal employees to be reimbursed the cost of meals, lodging and other miscellaneous expenses incident to official travel are contained in 5 U.S.C. § 5702 (1982) and implementing regulations. Under that Code provision and paragraphs 1-7.6a and 1-8.1a of the Federal Travel Regulations (September 1981), incorp. by ref., 41 C.F.R. Part 101-7 (1983) (FTR), an employee's basic entitlement is reimbursement for expenses incurred during periods he is performing official travel away from his permanent duty station and away from his place of abode from which he commutes to that duty station.

Eligibility for reimbursement

The threshold question for resolution is whether Mr. Horton may be reimbursed for his expenses (other than lodging expenses for which no claim is made) while staying at his family residence during his temporary duty assignment in the Chicago area.

In our decision Durel R. Patterson, B-211818, February 14, 1984, affirmed on reconsideration, B-211818, November 13, 1984, we considered the case of an employee

who sought reduced per diem (no lodging cost) while staying at his family residence which was near Baton Rouge, Louisiana, one of his temporary duty locations. The facts in that case showed that the employee's duties were as an itinerant with many temporary duty locations. However, when he performed duties at his official permanent station he stayed at his in-laws' house and commuted from that location. Citing to the case of Daisy Levine, 63 Comp. Gen. 225 (1984), we ruled that since he was an itinerant employee, so long as he performed some duties at his official duty station, he could be paid per diem for duty performed at various temporary duty points. We further ruled that he was entitled to per diem (other than lodging) when temporary duty was performed in the area of his family domicile based on an agency regulation similar to the DOT regulation involved in Mr. Horton's case.

In the present case, while Mr. Horton is not an itinerant employee as in Patterson, the issue regarding residence location for travel expense reimbursement purposes is similar. Mr. Horton has asserted that at the time of his permanent change of station to Springfield from the Chicago area in April 1983, he left his family residence in Chicago and leased an apartment in Springfield, which he used to commute to his Springfield duty station. There is nothing in the record which shows that this was not the case. Therefore, it is our view that, for the purposes of Mr. Horton's travel entitlements, his apartment in Springfield was his residence at the times in question.

Per diem versus actual subsistence

Paragraph 1-7.1 of the FTR provides that per diem allowances shall be paid for official travel except when an agency determines that reimbursement should be on the basis of actual subsistence expenses as provided in Part 8 of Chapter 1, FTR. Paragraph 1-8.1 of the FTR provides in part:

"a. General. * * * A traveler may be reimbursed for the actual and necessary expenses * * * for travel to high rate geographical areas. * * *

"b. Travel to high rate geographical areas (HRGA's). Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area * * *. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

"(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official designated under 1-8.3a(1) determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate * * *"

The Department of Transportation in DOT Notice N 1500.46, March 21, 1984, which supplements the FTR, has provided for special per diem rates where needed. That notice provides, in paragraph 6(c):

"c. Lodging Obtained from Noncommercial Sources. Employees on official travel who obtain lodging from noncommercial sources, such as when they stay with friends or relatives, will be authorized a flat per diem rate. The flat per diem rate will be equal to 50 percent of the locality per diem rate, or 50 percent of the actual expense maximum if travel is in a high rate geographical area. Travel authorizing officials may recommend lesser flat rates of per diem in individual cases where the costs of subsistence are known in advance of travel and are anticipated to be significantly less than the 50-percent rates. These lesser rates must be approved at the Deputy Assistant Secretary or Deputy Administrator level." (Emphasis added.)

The general travel order issued to Mr. Horton and other employees incorporated DOT Notice N 1500.46 by reference. Item 10 of the travel order states that "Per Diem

is Authorized as Provided in the DOT Travel Manual unless a specific per diem rate is indicated hereon." The travel order contains a listing in Item 13 of the applicable per diem rates and actual expense rates for various locations in Illinois and does not specifically refer to the 50 percent rate for non-commercial lodgings. However, this listing merely sets forth the otherwise applicable rates for convenient reference and does not indicate any intent to provide a special rate for these travelers. Since the DOT Notice N 1500.46 expressly requires a 50 percent rate for employees staying at non-commercial lodgings, there was no need to specifically refer to it in the travel order, and its absence from Item 13 does not render it inapplicable.

The question remaining is whether the DOT notice is valid. As noted previously, paragraph 1-8.1 of the FTR authorizes a per diem rate for HRGA travel if the factors cited in paragraph 1-7.3a would reduce the employee's travel expenses, provided that a designated agency official "determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate * * *."

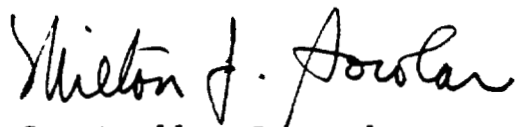
We do not find the DOT regulation objectionable. Use of non-commercial lodgings is one of the factors reducing travel expenses covered by paragraph 1-7.3a of the FTR.^{1/} We have recognized the appropriateness of establishing a fixed per diem rate for general application where non-commercial lodgings are used, so long as that rate is not arbitrary or unreasonable. See, e.g., Clarence R. Foltz, 55 Comp. Gen. 856 (1976); Durel R. Patterson, *supra*; Jack O. Padrick, B-189317, November 23, 1977. The Padrick decision, discussed hereafter, specifically approves establishing such a rate for general application to HRGA travel. Thus, DOT can make a general determination, as it has in Notice N 1500.46, that a fixed reduced per diem rate is appropriate when an employee uses non-commercial lodgings. Further, we find no basis to object to fixing

^{1/} In this regard, paragraph 1-7.3a refers to "[k]nown arrangements at temporary duty locations where lodging and meals may be obtained without cost or at prices advantageous to the traveler * * *."

this rate at 50 percent of the full per diem or the maximum actual expense allowance, depending on which method of reimbursement would otherwise apply.^{2/}

It could be argued that paragraph 1-8.1 of the FTR literally requires that a separate decision of whether or not to apply the fixed rate must be made each time an employee uses non-commercial lodgings; indeed, our Padrick decision, supra, does interpret the FTR as requiring such case-by-case determinations. However, on reflection, we do not regard this interpretation as reasonable and will no longer follow it. Requiring a separate determination in each individual case largely defeats the purpose of having a fixed rate for general application to use of non-commercial lodgings. Further, it is significant that the DOT notice provides for departures from the 50 percent rate to account for the circumstances of particular travel. In effect, therefore, the notice establishes a presumption that the 50 percent rate is appropriate, but permits exceptions to be made in individual cases. We believe that this approach adequately serves both the objective of administrative efficiency and the need to accommodate the circumstances of particular travel.

Thus, we hold that DOT Notice N 1500.46 March 21, 1984, is a valid exercise of agency authority to provide per diem rates in a HRGA. Its terms were incorporated by reference in Item 10 of Mr. Horton's travel order. Hence, his travel to Chicago is governed by paragraph 6(c) of the DOT Notice and he is entitled to be reimbursed at the 50 percent rate of the actual expense rate for Chicago.

for 
Comptroller General
of the United States

^{2/} Cf., Harry G. Bayne, 61 Comp. Gen. 13 (1981); Robert P. Trent, B-211688, October 13, 1983; Social Security Administration Employees, B-208794, July 20, 1983. These decisions approve agency regulations which established general limitations on reimbursement for meals and miscellaneous expenses alone of 45 to 46 percent of the applicable per diem or maximum actual expense allowance.